

I. Rejection of Claims 1-25 under 35 U.S.C. §103

The Examiner has rejected Claims 1-25 under 35 U.S.C. §103(a) as being unpatentable over a patent application filed by Xiang Zhang, U.S. Patent Application Publication No. 20010029263A1, in view of a patent application filed by Tommi Raivisto, *et al.*, U.S. Patent Application Publication No. 20040075675A1. As the Examiner is no doubt aware, determination of obviousness requires consideration of the invention considered as a whole; the inquiry is not whether each element exists in the prior art, but whether the prior art made obvious the invention as a whole. Furthermore, there must be some suggestion or teaching in the art that would motivate one of ordinary skill in the art to arrive at the claimed invention; a reference that teaches away from a claimed invention strongly indicates nonobviousness.

Moreover, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure.

Zhang discloses a mobile station monitoring system that has a maintenance task module to accumulate performance data reported within a mobile station, a transmission conduit for transmitting accumulated performance data to a central location, and a central receiver at the central location that receives and deciphers the transmitted accumulated performance data. Zhang

also describes the mobile station as having a maintenance task module that accumulates the reported performance data within the mobile station. (Abstract) As noted by the Examiner, Zhang does not describe or disclose a method or apparatus for ascertaining the state of a mobile communication apparatus by using a subscriber information module (SIM) card for collecting data on at least one of the individual components and procedures embedded within the mobile communications apparatus.

Raivistio is entitled "Apparatus and Method for Accessing Services Via a Mobile Terminal." As noted in Ravistio it is "...directed to a system, apparatus, and method for locating available information and services/applications via mobile terminals through the use of a service panel that is operable via the mobile terminal." (Para. 0009). Raivisto thus describes a system for facilitating the provisioning of services and the execution of those services at mobile terminals. (Abstract).

The Examiner states that Raivisto is in the same field of endeavor as Zhang. If the Examiner means that the both Raivisto and Zhang address mobile phone systems and are thus in the same field of endeavor, then the Applicant agrees. However, if the Examiner means that Raivisto and Zhang are both directed to the problem of identifying, gathering data on and providing solutions for problems inherent in mobile phones, then the Applicant does not agree that Raivisto and Zhang are in the same field of endeavor. Raivisto and Zhang actually represent extremely different aspects of mobile phone technology. Zhang addresses the identification of mobile phone problems, gathering data regarding the same and providing solutions to such problems. On the other hand, Raivisto addresses how a user of a mobile phone can use that device to gather data from the

communications network. Stated differently, Zhang is concerned with the gathering of information about a mobile phone and delivering that information to the network while Raivisto is concerned about gathering information on the network and providing it to the user of the mobile phone. Thus, the Applicant disagrees with the Examiner's conclusion that Zhang and Raivisto are sufficiently analogous to be combined so as to support the rejection of Claims 1-25 under 35 U.S.C. §103(a).

It should also be noted that although Raivisto mentions that a subscriber information module (SIM) card is used to collect data, the data collected is does not address the state of the mobile communication apparatus using the SIM card. Raivisto contains no teaching or suggestion that a SIM card can be provisioned or programmed with a routine for collecting data on at least one individual components or procedure embedded within a mobile communication apparatus based on status quo information. The Applicant again notes that the inquiry is not whether each element exists in the prior art in order to support a rejection under 35 U.S.C. §103(a), but whether the prior art of Zhang and Raivisto made obvious the invention as a whole. The Applicant submits there is no suggestion or teaching in Zhang and Raiviston, taken together, that would motivate one of ordinary skill in the art to arrive at the claimed invention. Thus, Zhang, individually or in combination with Raivisto, fails to teach or suggest the invention recited in independent Claims 1 and 13 and their dependent claims, when considered as a whole. Claims 1-25 are therefore not obvious in view of Zhang and Raivisto.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claims 1-25 under 35 U.S.C. §103(a). The Applicant therefore respectfully requests the Examiner to withdraw the rejection.

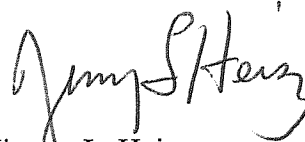
II. Conclusion

In view of the foregoing amendment and remarks, the Applicant now sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-25.

The Applicant requests the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, PC

A handwritten signature in black ink, appearing to read "Jimmy L. Heisz", with a stylized flourish at the end.

Jimmy L. Heisz
Registration No. 38,914

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P.O. Box 832570
Richardson, Texas 75083
(972) 480-8800